

Grain Inspection, Packers and Stockyard Admin. (FGIS), USDA

§ 800.55

Pending final determination, the Service may terminate the temporary refusal if alternative managerial, staffing, financial, or operational arrangements satisfactory to the Service can be and are made by the respondent.

(c) *Procedure for other than summary refusal.* Except as provided in paragraph (b) of this section, before the Service refuses to provide official services the respondent shall be (1) notified of the services that are to be refused, the locations at which and the time period for which service will be refused, and the reasons for the refusal; and (2) afforded an opportunity for a hearing in accordance with the provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR 1.130 *et seq.*). At the discretion of the Service, prior to initiation of formal adjudicatory proceedings, the respondent may be given an opportunity to express his or her views on the action proposed by the Service in an informal conference before the Administrator of the Service. If, as a result of such an informal conference, the Service and the respondent enter into a consent agreement, no formal adjudicatory proceedings shall be initiated.

(d) *Assessment of civil penalties.* Any person who has knowingly committed any violation of section 13 of the Act or has been convicted of any violation of other Federal law with respect to the handling, weighing, or official inspection of grain may be assessed a civil penalty not to exceed \$75,000 for each such violation as the Administrator determines is appropriate to effect compliance with the Act. Such action may be in addition to, or in lieu of, criminal penalties under section 14 of the Act, or in addition to, or in lieu of, the refusal of official services authorized by the Act.

(e) *Provisions for civil penalty hearings.* Before a civil penalty is assessed against any person, such person shall be afforded an opportunity for a hearing as provided under paragraph (c)(2) of this section.

(f) *Collection of civil penalties.* Upon failure to pay the civil penalty, the Service may request the Attorney General to file civil action to collect the

penalty in a court of appropriate jurisdiction.

[45 FR 15810, Mar. 11, 1980, as amended at 51 FR 12830, Apr. 16, 1986]

§ 800.51 Expenses of agency, field office, or Board of Appeals and Review.

For any request that has been dismissed or withdrawn under § 800.47, § 800.48, or § 800.49, respectively, each applicant shall pay expenses incurred by the agency or the Service.

(Secs. 8, 9, 10, 13 and 18, Pub. L. 94-582, 90 Stat. 2870, 2875, 2877, 2880, and 2884, 7 U.S.C. 79, 79a, 79b, 84, 87, and 87e)

[49 FR 30915, Aug. 2, 1984]

§ 800.52 Official services not to be denied.

Subject to the provisions of §§ 800.48, 800.49, and 800.50, no person entitled to official services under the Act shall be denied or deprived of the right thereto by reason of any rule, regulation, bylaw, or custom of any market, board of trade, chamber of commerce, exchange, inspection department, or similar organization; or by any contract, agreement, or other understanding.

DESCRIPTIONS

§ 800.55 Descriptions by grade.

(a) *General.* In any sale, offer for sale, or consignment for sale, which involves the shipment of grain in interstate or foreign commerce, the description of grain, as being of a grade in any advertising, price quotation, other negotiation of sale, contract of sale, invoice, bill of lading, other document, or description on bags or other containers of the grain, is prohibited if such description is other than by an official grade designation, with or without additional information as to specified factors. An official grade designation contains any of the following: The term "U.S.," the numerals 1 through 5, the term "Sample grade," or the name of a subclass or a special grade of grain specified in the Official United States Standards for Grain.

(b) *Proprietary brand names or trademarks.* A description of grain by a proprietary brand name or a trademark that does not resemble an official

§ 800.56

grade designation will not be considered to be a description by grade; but a description by a proprietary brand name or trademark that contains singly or in combination any of the terms referenced in paragraph (a) of this section shall be considered to resemble an official grade designation.

(c) *Use of one or more factor designations.* In interstate commerce, a description of grain by the use of one or more grade factor designations which appear in the Official United States Standards for Grain or by other criteria will not be considered to be a description by grade.

(d) *False or misleading descriptions.* In any sale, offer for sale, or consignment for sale of any grain which involves the shipment of grain from the United States to any place outside thereof, knowingly using a false or misleading description of grain by official grade designation, or other description is prohibited.

[50 FR 9982, Mar. 13, 1985]

§ 800.56 Requirements on descriptions.

Section 13 of the Act contains certain prohibitions with respect to the use of official grade designations, official marks, and other representations with respect to grain.

(a) The use of an official grade designation, with or without factor information, or of official criteria information, or of the term "official grain standards," shall not, without additional information, be considered to be a representation that the grain was officially inspected.

(b) The use of any symbol or term listed as an official mark, at § 800.0(b)(68), with respect to grain shall be considered to be a representation of official service under the Act: Provided however, that the use of the official marks "official certificate;" "officially inspected;" "official inspection;" "officially weighed;" "official weight;" and "official weighing" shall not be considered to be a representation of official service under the Act if it is clearly shown that the activity occurred under the U.S. Warehouse Act (7 U.S.C. 241 *et seq.*): Provided further, that the use of the official mark "officially tested" with respect to grain inspection and weighing equipment shall not be con-

7 CFR Ch. VIII (1-1-02 Edition)

sidered to be a representation of testing under the Act if it is clearly shown that the equipment was tested under a State statute.

[50 FR 9982, Mar. 13, 1985]

GRAIN HANDLING PRACTICES

§ 800.60 Deceptive actions and practices.

In the absence of prior adequate notice to appropriate official personnel, any action or practice, including the loading, weighing, handling, or sampling of grain that knowingly causes or is an attempt to cause the issuance by official personnel of a false or incorrect official certificate or other official form, is deemed to be deceptive and, as such, is a violation of section 13(a)(3) of the Act. For the purposes of this paragraph, adequate notice is written or oral notice given to an agency or the Service, as applicable, before official personnel begin to perform official inspection or weighing services. If oral notice is given, it must be confirmed in writing within 2 business days. To be adequate, the notice must explain the nature and extent of the action or practice in question and must identify the grain, stowage container, equipment, facility, and the official personnel actually or potentially involved.

(Approved by the Office of Management and Budget under control number 0580-0011)

[48 FR 17330, Apr. 22, 1983, as amended at 48 FR 44453, Sept. 29, 1983; 54 FR 5924, Feb. 7, 1989]

§ 800.61 Prohibited grain handling practices.

(a) *Definitions.* For the purpose of this section, dockage and foreign material in grain shall be:

(1) Defined for export elevators at export port locations as set forth in 7 CFR part 810 and as dust removed from grain and collected in a bin/container and as dust settling on floors, equipment, and other areas, commonly referred to as dust sweepings; and

(2) Defined for other than export elevators as set forth in 7 CFR part 810.

(b) *Prohibited practices.* Except as permitted in paragraphs (c) and (d) of this section, no person shall: